IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 27218 of 2006(M)

PETITIONER:

TITUS K.MATHEW, SR.LECTURER,
DEPARTMENT OF PHYSICS, GOVT. COLLEGE FOR WOMEN,
TRIVANDRUM.
RESIDING AT NRA-42, OONNAMPARA, PEROORKADA,
TRIVANDRUM.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

COCHIN UNIVERSITY OF SCIENCE AND
TECHNOLOGY (CUSAT), COCHIN UNIVERSITY P.O.,
COCHIN-682 022, REPRESENTED BY ITS REGISTRAR.

BY ADV. SRI.A.A.ABUL HASSAN,SC,COCHIN UNIVERSIT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K BASHEER, J.

W.P. (C) NO.27218 of 2006

Dated this the 8th day of June, 2007

J U D G M E N T

Petitioner, who is working as a Senior Lecturer in the Department of Physics in a Government College had applied for the post of Reader in Theoretical Physics in response to Ext.P6 notification issued by the Cochin University of Science and Technology ('CUSAT' for short). It appears that only the petitioner and two others had applied for the above post. The appointing authority found that only the petitioner had got the requisite qualifications and therefore he was invited for interview on 18.09.2006. He was duly selected by the Selection Committee. Later, the Syndicate approved the selection and resolved to appoint him. According to the petitioner, the decision of the Syndicate was reported in Malayala Manorama Daily dated 24.09.2006. A copy of the said paper report is on record as Ext.P9. This writ petition was preferred by the petitioner in October, 2006 complaining that the University (CUSAT) is dragging its feet in the matter of his appointment without any justifiable reasons. The prayer is to issue a writ of Mandamus or such other appropriate writ, order or direction to

the University to appoint him to the post in question.

2. While admitting that petitioner was selected for the post, it is contended by the University that he had not been appointed so far in view of certain amendments brought in by the Government to Rules 14 and 15 of Kerala State & Subordinate Service Rules (for short " the Rules"). It is the case of the University that the above post of Reader was earmarked for "other backward community" as indicated in Ext.P6 notification itself. The said post by rotation should go to turn 90 earmarked for OBC. According to the University, petitioner "belongs to the category of Scheduled Caste converted to Christianity" and therefore he would not be entitled to get the benefit of turn 90 reserved for an OBC candidate. The amendment to Rules 14 and 15 further mandated that a vacancy which is earmarked for a particular community or caste should be given to that caste or community alone. If no candidate belonging to the said caste or community is available, the said vacancy should be renotified.

3. The above contention raised by the University is countered by the petitioner contending that Ext.P6 notification

itself contained a clause, which stipulated that candidates belonging to other communities as well as others under the open competition category could also apply. For the sake of convenience, the said clause in Ext.P6 notification is extracted hereunder:

> "Open competition candidates and reserved community candidates may also apply for the posts reserved for a particular community except those reserved for SC/ST; but they will be considered for appointment only in the absence of candidates belonging to the particular community for which a post is reserved."

4. The petitioner contends that even assuming that he does not belong to other backward community, he cannot be denied appointment in view of the above clause in the notification. It is also contended that the amendments brought in by the Government to Rules 14 and 15 of the Rules, though retrospective, from February, 2006 will have no relevance or

application as far as Ext.P6 notification and the selection pursuant thereto are concerned. It is pointed out by the learned counsel that Ext.P6 notification dated 05.10.2005 was published on 10.10.2005. The last date for receipt of application was 21.11.2005. Interview was held on 18.10.2006. Petitioner alone was found to be qualified for the post and he was selected by the Committee constituted for this purpose. The Syndicate considered the matter in its meeting held on 23.9.2006 and it was resolved that the petitioner was entitled to be appointed. It is thus contended by the petitioner that the stand now taken by the University cannot be accepted since the University was all along aware that the amendments to the Rules had come into force with effect from February, 2006. But nevertheless the University had proceeded with the selection process. A committee was constituted for this purpose, which had selected the petitioner. Still later, the Syndicate held deliberations over the issue and a conscious decision was taken to appoint the petitioner. It is therefore puerile on the part of the University now to turn round and contend that the petitioner cannot be appointed in view of the amendment brought in by the

Government to Rules 14 and 15 of the Rules.

5. In this context, petitioner also points out further that the University in its counter affidavit had explicitly admitted that the application submitted by the petitioner alone was accepted as he possessed sufficient qualifications and experience. There is considerable force in the above contention raised by the petitioner. In the above facts and circumstances of the case, I do not find any justification on the part of the University in refusing to appoint the petitioner as Reader if he is otherwise eligible. It may be true that Rules 14 and 15 were amended by the Government with retrospective effect from February, 2006. But the notification clearly indicated that in the absence of a candidate belonging to the particular community to which the post was reserved, other eligible candidates from other categories would also be considered. More importantly the University had proceeded with the selection process. In fact the Syndicate had decided to appoint the petitioner notwithstanding the amendment. It cannot be said that the University was not aware of the amendments brought in by the Government after the publication of the notification. In

that view of the matter, the contention raised by the petitioner is liable to be accepted.

6. Therefore, the writ petition is allowed. The University shall issue order of appointment to the petitioner as Reader in Theoretical Physics, if he is otherwise eligible and if there is no other legal impediment. This shall be done within two weeks from the date of receipt of a copy of this judgment.

(A.K. BASHEER, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007